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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

VIP Products, LLC, an Arizona limited liability company, Plaintiff, v. **Heineken USA Incorporated** , a New York corporation, **Heineken Brouwerijen B.V**, a Netherlands corporation, Defendant.	No. **COMPLAINT** **(Declaratory Judgment)**

Courthouse News Service

Plaintiff, VIP Products, LLC ("Plaintiff") for its complaint against defendant Heineken USA Incorporated and Heineken Brouwerijen B.V. (collectively, "Defendants"), by and through its undersigned counsel, Mariscal, Weeks, McIntyre & Friedlander, P.A., hereby alleges and states as follows:

I.

THE PARTIES

1. Plaintiff is an Arizona limited liability company corporation with its principal place of business at 16515 S. 40th Street, Suite 121, Phoenix, Arizona 85048.

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2. Upon information and belief, defendant Heineken USA Incorporated is a New York corporation with its principal place of business at 360 Hamilton Ave. Ste. 1103, White Plains, New York 10601-1841.

3. Upon information and belief, defendant Heineken Brouwerijen B.V. is a Netherlands corporation with its principal place of business in Amsterdam, The Netherlands.

4. Defendants are citizens of a state other than Arizona, within the meaning of 28 U.S.C. § 1332(c)(1). Defendants have caused events to occur in Maricopa County, Arizona out of which this complaint derives.

II.

JURISDICTION

5. This Court has subject matter jurisdiction over this claim for declaratory judgment pursuant to 28 U.S.C. § 2201 and Rule 57, Fed. R. Civ. P., as this is a case of actual controversy within the Court's jurisdiction. The Court has subject matter jurisdiction over the underlying claim pursuant to (a) 28 U.S.C § 1331, as it involves the right to use a trademark and threatened claims under the Lanham Act.

III.

VENUE

6. Venue is proper in this district under 28 U.S.C. § 1391(a) and (c), as Defendants are subject to personal jurisdiction in this state.

IV.

JURY DEMAND

7. Plaintiff demands a trial by jury on all claims so triable.

V.

FACTS COMMON TO ALL CLAIMS

8. Plaintiff is engaged primarily in the business of designing, manufacturing, and marketing chew toys for dogs.

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9. Plaintiff sells several lines of dog chew toys, including the "Tuffy's" line (durable sewn/soft toys), the "Mighty" line (durable toys made of a different material than the Tuffy's line), and the "Silly Squeakers" (durable rubber squeaky novelty dog toys).

10. In approximately September of 2007 VIP introduced its "HeinieSniff'n" durable rubber squeaky novelty dog toy.

11. Plaintiff is the owner of all rights in its HeinieSniff'n trademark and trade dress for its durable rubber squeaky novelty dog toy.

12. Upon information and belief, defendant Heineken USA Incorporated is the United States licensee of several trademarks for beer owned by defendant Heineken Brouwerijen B.V., including the mark "HEINEKEN", United States Trademark Reg. No. 956,608.

13. VIP designed the HeinieSniff'n label to incorporate a few elements of the Heineken trade dress; for example VIP included a red star on its label. On the other hand, VIP included drastic differences from the Heineken marks and trade dress in the HeinieSniff'n label to make it clear that it was a parody. For example, VIP selected the words "HeinieSniff'n" because they are clearly not "Heineken", included the humorous phrase "Premium Sniffer" on the toy in two locations, and placed two large cartoon dogs on the front label.

14. Upon information and belief, on or about April 17, 2009, attorneys for Defendants contacted Scalawags of Kennebunkport, Maine, a retail customer of Plaintiff, and demanded that Scalawags cease and desist all sales of Plaintiff's HeinieSniff'n parody dog toy.

15. Upon information and belief, Defendants' attorneys contended that the HeinieSniff'n novelty dog toy infringed and diluted Defendants' trademarks and trade dress and requested that Scalawags cease distribution of Plaintiff's HeinieSniff'n parody dog toy and remove all pictures of Plaintiff's parody dog toy from their Web site.

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V.

CLAIM FOR RELIEF

(Declaratory Judgment)

16. Plaintiff incorporates and realleges herein by this reference Paragraphs 1 through 15, inclusive, as though set forth in full herein.

17. There is an actual and justiciable controversy between Plaintiff and Defendants regarding Plaintiff's use of its HeinieSniff'n trademark and trade dress for its novelty dog toy.

18. As a matter of law, Plaintiff's use of its HeinieSniff'n name and mark does not infringe or dilute any claimed trademark rights and/or trade dress rights that Defendants may claim in trademark and/or trade dress for their Heineken beer.

WHEREFORE Plaintiff respectfully requests that the Court:

A. Issue a judgment declaring that Plaintiff's use of its HeinieSniff'n name and mark for its novelty dog toy does not infringe or dilute any trademark rights claimed by one or both Defendants in the name and mark "HEINEKEN."

B. Issue a judgment declaring that Plaintiff's use of its HeinieSniff'n trade dress for its novelty dog toy does not infringe or dilute any rights claimed by one or both Defendants in the trade dress for Heineken beer.

C. Grant such additional or other relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED this 21st day of April, 2009.

MARISCAL, WEEKS, McINTYRE & FRIEDLANDER, P.A.

By: s/ David G. Bray

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